

**REQUEST FOR PROPOSAL RFP# OWE22-01**

**Issue Date: August 5, 2021**

**Title: Incentive Program**

**Commodity Codes: 03743, 03752, 03778, 08015, 08065**

**Issuing Agency: Department of Human Resource Management  
Commonwealth of Virginia  
James Monroe Building, 13<sup>th</sup> Floor, 101 North 14<sup>th</sup> Street  
Richmond, Virginia 23219  
Fax: (804) 225-2790  
E-Mail: todd.hopkins@dhrm.virginia.gov**

**Initial Period Of Contract: From October 1, 2021 Through September 30, 2023 (\*Renewable).**

**Sealed Proposals Will Be Received Until 2:00 PM Tuesday September 1, 2021 For Furnishing The Goods/Services Described Herein.**

**All Inquiries For Information Should Be Directed To: Todd Hopkins E-Mail:  
todd.hopkins@dhrm.virginia.gov.**

**IF PROPOSALS ARE MAILED, SEND DIRECTLY TO ISSUING AGENCY SHOWN ABOVE. IF PROPOSALS ARE HAND DELIVERED, USE SAME ADDRESS.**

**In compliance with this Request For Proposals (RFP) and all conditions imposed in this RFP, the undersigned firm hereby offers and agrees to furnish all goods and services in accordance with the attached signed proposal or as mutually agreed upon by subsequent negotiation, and the undersigned firm hereby certifies that all information provided below and in any schedule attached hereto is true, correct, and complete.**

**\* Virginia Contractor License No. \_\_\_\_\_  
Class: \_\_\_\_\_**

**\* DSBSD-certified Small Business No. \_\_\_\_\_  
Specialty Codes: \_\_\_\_\_**

**Name And Address Of Firm:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Date: \_\_\_\_\_  
By: \_\_\_\_\_**

**(Signature in Ink)**

**Zip Code: \_\_\_\_\_**

**Name: \_\_\_\_\_**

**eVA Vendor ID or DUNS #: \_\_\_\_\_**

**(Please Print)**

**Fax Number: (\_\_\_\_) \_\_\_\_\_**

**Title: \_\_\_\_\_**

**E-mail Address: \_\_\_\_\_**

**Telephone Number: (\_\_\_\_) \_\_\_\_\_**

**Note: This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, sexual orientation, gender identity, political affiliation, or veteran status or any other basis prohibited by state law relating to discrimination in employment. Faith-based organizations may request that the issuing agency not include subparagraph 1.e in General Terms and Condition C. Such a request shall be in writing and explain why an exception should be made in that invitation to bid or request for proposal.**

## 1.0 PURPOSE:

The objective of this Request for Proposals is to solicit sealed proposals to establish a contract for a platform for an outcome based employee health and wellness incentive program focusing on changing behaviors. The Department of Human Resource Management, Office of Workforce Engagement (OWE) places a high priority on the health of the employee workforce within Virginia. This outcome based incentive program would be a partnership between The Office of Workforce Engagement within the Virginia Department of Human Resources Management (DHRM) and the Offeror.

## 2.0 BACKGROUND:

The Office of Workforce Engagement is seeking to procure a platform to facilitate and further the efforts of state employees with their wellness goals. The CommonHealth (CH) team, under the OWE, has utilized standard methods for incentivizing participating employees that attend CommonHealth programs through material goods. Current CH programming includes virtual and in-person education sessions as well as periodic activity challenges.

## 3.0 STATEMENT OF NEEDS:

The Department of Human Resource Management, Office of Workforce Engagement seeks to partner with an Offeror to provide a voluntary health improvement and wellness program for employees including an array of wellness resources, challenges and other activities. Employees will earn points for various activities. Points can be used to select incentives. Incentives could vary annually depending upon budget. The Offeror must have the capability to securely track and report employee participation in all programs in order for members to earn incentives as defined by the Commonwealth.

A. MINIMUM QUALIFICATION REQUIREMENTS The following Minimum Qualification Requirements have been established for this procurement:

1. The Offeror's proposal should outline their work plan for providing the following items with a schedule to begin on or around October 1, 2021. The selected Offeror will need the capabilities to provide technical support and services available online and via a smartphone application to a population of approximately 100,000 employees. Offeror will also work with the Office of Workforce Engagement to develop new and innovative solutions to support efforts to generate healthcare savings.
2. The offeror shall have the capability to provide the requested weight management services listed in this RFP to a total population of 100,000 or more;

3. Proposals that fail to meet all of these requirements will be declared non-responsive.

#### 4.0 PLANNING/DESIGN:

##### A. Point value system and redemption system

1. Tracking each individual's points
2. Overall tracking of all employees for data tracking purposes of participation
3. The offeror must be able to adapt to the assigned point value system and applicable activities (change value of points)
4. Prizes redeemed cannot exceed the monetary value of \$25
5. The offeror provides automatic expiration system/reset
6. With each category you will be able to achieve a specific amount of points

##### **Ex. Points value scheme explained**

**Goal** = Total points per 3 months that can be gained, expires/zeros out at next 3 month time period. Need to be able to meet goal without completing all Achievement Area Badges

**Achievement Area Badges** = Ex. Wellness Checkpoints, Fitness, Self-Care

**Activity Points** = number of points for each time an activity is completed, with a set number of activities to vary per Achievement Area

**Example:** Achievement Area, Fitness

Total Activity points that can be achieved for Fitness Achievement Badge = 9

Each Fitness Activity = 3 points (must complete activity at least 3 times to complete Achievement Badge)

**Example:** Achievement Area, New Program

Total Activity points that can be achieved for New Program Badge = 5

Must attend one New Program = 5 points / which also completes the Achievement Area and gains the badge

*Scheme encourages variety in activities for a well-rounded incentive program, also allows CommonHealth to inject novel Achievement Areas to promote new programs, or encourage neglected Achievement Areas. It also safe-guards against possible abuse of the system through "activity stacking".*

- B. Ability to manage Commonwealth of Virginia's points based Incentive Program
  - 1. Manage a point system tailored toward upward of 100,000 employees (recorded, and anytime access of training, preceded by live training)
  - 2. Flexibility in changing user quantity based on how many participants enroll
- C. Ability to provide training for program administrators and employee end users
  - 1. Offeror will provide training for Wellness Consultants on the basis of the entire app and understanding how participants will utilize the program
  - 2. Ability to have pre-recorded trainings as refreshers and for new participants
  - 3. Trainings made available for our Agency Coordinators (AC trainings) and state employees
- D. Wellness Consultants will need to have access as program administrators
  - 1. Multi-platform testing, functionality, deployment and support (24/7)
  - 2. Access to a team of technical support members for troubleshooting
- E. Direct to end-user distribution of incentives (home or office?)
  - 1. Maintaining inventory - storage, shipment and regular reporting of items
  - 2. Provide tracking, order information and support to end user
  - 3. Offeror will be responsible for replacing missing or damaged items at no additional cost to OWE/DHRM
  - 4. Brand integrity of all COV logos and fonts provided will be adhered to at all times, and follow branding guidelines (to be provided)
  - 5. Offeror will provide a mechanism for end user to save preferred mailing address; all addresses and identifiable information will adhere to state data retention guidelines

- F. Provide technical and platform support to all users. Offeror will provide timely responses to participants regarding support Monday through Friday 7am to 7pm EST (to ensure that shift work end users are supported)
- G. . Comply with all data retention schedules (digital, paper; specific retention schedule provided by OWE/DHRM when required)
- H. . Branding/Logo will not be used outside of intended purposes without permission
- I. Gamification

An interactive component where participants can engage with each other related to; wellness topics and earn bonus points for their account. Interactive platform providing quizzes, games, and knowledge based trivia.

#### 5.0 Security Requirements:

- A. Protection of personal information, including, name, email address,
- B. Optional inclusion of birthday
- C. Offeror must provide a recent SOC II security report
  - 1. An offeror proposal shall comply with all current COV ITRM Security Policies and Standards, as applicable, found at:  
<https://www.vita.virginia.gov/it-governance/itrm-policies-standards/>  
  
 If proposed solution does not, please provide details that specify the Standard/Policy and how Supplier's solution does not comply.
  - 2. The offeror solution shall comply with all current COV ITRM Policies and Standards, as applicable, found at: <https://www.vita.virginia.gov/it-governance/itrm-policies-standards/>  
  
 If proposed solution does not, please provide details that specify the Standard/Policy and how Supplier's solution does not comply.
  - 3. The offeror proposed interfaces to Commonwealth systems comply with or have approved exceptions to all applicable Commonwealth Data Standards as found at <https://www.vita.virginia.gov/it-governance/itrm-policies-standards/>

## 6.0 REPORTING CAPABILITIES:

- A. Tax Reporting: If DHRM agrees to subsidize a portion of the monthly membership fee, the offeror shall provide DHRM with a quarterly taxable income report which provides a list of; all employees enrolled in the program, state provided unique identifier and the amount of subsidy received by each employee.
- B. Explain your dynamic web reporting capabilities and channels the reports can be downloaded in a variety of mediums.
- C. Overall membership trend review at various levels, desired to be viewable by users at various levels as well as looking at data from multiple views.
- D. Push technology – to send specified users notifications for report availability and general communication for program information.

## 7.0 DELIVERY:

- A. Offeror shall provide branded materials in soft copy and hard copy to be shared with DHRM for marketing.
- B. Offeror shall be responsible for mailing correspondence to existing employees via mail within 48 hours of receipt of data from DHRM.
- C. Offeror shall provide multiple options for employee response with electronic response preferred.
- D. ON-GOING SUPPORT FOR DHRM, Offeror shall provide the following:
  - 1. Materials (printed, e-materials).
  - 2. Troubleshooting/help.
  - 3. Training conducted onsite for appropriate DHRM staff.
  - 4. DHRM staff with all needed resources for successful implementation.
  - 5. Resolution of errors without app software

## 8.0 PROCUREMENT PROCEDURES:

- A. METHOD AWARD
  - 1. The Department shall select two or more Offerors deemed to be fully qualified and best suited among those Offerors submitting proposals, unless the Department has made a determination in writing that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified

than the others under consideration. The selection of Offerors will be based on the evaluation factors included in this RFP. Negotiations shall be conducted with the selected Offeror(s). Price shall be considered when selecting finalists for negotiation, but shall not be the sole determining factor.

2. After negotiations have been conducted with each selected Offeror, the Department shall select the Offeror which, in its opinion, has made the best proposal. The Department shall award the contract to that Offeror. The Department may cancel this RFP, or reject proposals at any time prior to an award. The Department is not required to furnish a statement of the reason why a particular Offeror was not deemed to have made the best proposal (Section 2.2-4359, Code of Virginia).
3. Should the Department determine in writing, and in its sole discretion, that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror.
4. The contract will incorporate by reference all the requirements, terms and conditions of this RFP and the Contractor's proposal, except as either or both may be amended through negotiation.
5. Once the contract is awarded, Dept. of Human Resource Management will meet with the Offeror selected to review tasks and the timetable for delivery of milestone portions of the product.

**B. OFFEROR SUBMISSION:**

1. Electronic proposal submission with required documents attached is required. Offeror must be registered in eVA in order to submit an electronic proposal. Offeror must submit one (1) complete copy of the proposal and attachments. If proposal contains proprietary information, offeror must submit one (1) complete copy of the redacted proposal and attachments.

The following are instructions for submitting and electronic proposal:

- a. Go to [www.eva.virginia.gov](http://www.eva.virginia.gov) ;
- b. Click on "I Sell to Virginia";
- c. Click on "eVA Vendor Training"; and
- d. Click on "Respond to IFBs – RFPs and more".

**If an offeror need assistance submitting an electronic response, the offeror must contact eVA Customer Care at 1-866-289-7367 or email [eVACustomerCare@dgs.virginia.gov](mailto:eVACustomerCare@dgs.virginia.gov)**

2. Ownership of all data, materials and documentation originated and prepared for the Department pursuant to the RFP shall belong exclusively to the Department and be subject to public inspection in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by an offeror shall not be subject to public disclosure

under the Virginia Freedom of Information Act; however, the offeror must invoke the protections of Section 2.2-4342 of the Code of Virginia, in writing, at the time the data or other material is submitted. The written notice must specifically identify the data or materials to be protected and state the reasons why protection is necessary. The proprietary or trade secret material submitted must be identified as required and must indicate only the specific words, figures, or paragraphs which constitute trade secrets or proprietary information. The Department, in its sole discretion, may not consider proposals with unduly broad requests for protection against disclosure.

C. MODIFICATION OF PROPOSALS:

Any changes, amendments or modifications of an offeror's proposal prior to the deadline for receipt of proposals must be in writing and submitted in the same manner as the original proposals. All modifications must be labeled conspicuously as a change, amendment, or modification of the previously submitted proposal. Changes, amendments, or modifications of proposals will not be considered after the deadline for receipt of proposals, except when the Department requests modifications.

D. INQUIRIES CONCERNING THE RFP:

Any communication concerning this RFP or any resulting contracts must be addressed **in writing** to:

Mr. Todd J. Hopkins  
Department of Human Resource Management  
James Monroe Building, 13th Floor  
101 North 14th Street  
Richmond, Virginia 23219  
E-mail Address: [todd.hopkins@dhrm.virginia.gov](mailto:todd.hopkins@dhrm.virginia.gov)

E. PUBLIC INSPECTION OF PROCUREMENT RECORDS:

Proposals will be subject to public inspection only in accordance with Section 2.2-4342 of the Code of Virginia.

F. CLARIFICATION OF PROPOSAL INFORMATION:

The Department reserves the right to request verification, validation or clarification of any information contained in any of the proposals. This clarification may include checking references and securing other data from outside sources, as well as from the offeror.

G. REFERENCE TO OTHER MATERIALS:

The offeror cannot compel the Department to consider any information except that which is contained in its proposal, or which is offered in response to a request from the Department. The offeror should rely solely on its proposal. The Department,



however, reserves the right, in its sole discretion, to take into consideration its prior experience with offerors and information gained from other sources.

H. TIMETABLE:

RFP Published August 5, 2021  
Proposals Due: September 1, 2021

I. EVALUATION AND AWARD CRITERIA:

	POINTS
Price	40
Qualifications, experience, Innovation with Performing requested service	40
SWAM ( <b>Provide utilization for first year only</b> )	20

9.0 SMALL BUSINESS SUBCONTRACTING AND EVIDENCE OF COMPLIANCE:

- A. It is the goal of the Commonwealth that 42% of its purchases be made from small businesses. This includes discretionary spending in prime contracts and subcontracts. All offerors are required to submit a Small Business Subcontracting Plan. Unless the offeror is registered as a DSBSD-certified small business and where it is not practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such subcontracting opportunities to DSBSD-certified small businesses. This shall include DSBSD-certified women-owned and minority-owned businesses when they have received DSBSD small business certification. No offeror or subcontractor shall be considered a small business unless certified as such by the Department of Small Business and Supplier Diversity (DSBSD) by the due date for receipt of bids or proposals. If small business subcontractors are used, the prime contractor agrees to report the use of small business subcontractors by providing the purchasing office at a minimum the following information: name of small business with the DSBSD certification number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product/service provided.
- B. Each prime contractor who wins an award in which a small business subcontracting plan is a condition of the award, shall deliver to the contracting agency or institution on a \_\_\_\_\_ (insert monthly, quarterly, or other frequency) \_\_\_\_\_ basis, evidence of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the small business subcontracting plan. Upon completion of the contract, the contractor agrees to furnish the purchasing office at a minimum the following information: name of firm with the DSBSD certification number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product or service provided. Payment(s) may be withheld until compliance with the plan is received and confirmed by the agency or institution. The agency or institution reserves the right to pursue other appropriate remedies for non-compliance to include, but not be limited to, termination for default.

10.0 GENERAL TERMS AND CONDITIONS Mandatory Internal Revenue Service (IRS)  
Publication 1075

- A. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (Code of Virginia, § 2.2-4366). ADR procedures are described in Chapter 9 of the Vendors Manual. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- B. **ANTI-DISCRIMINATION:** By submitting their proposals, offerors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender sexual orientation, gender identity, or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the contractor agrees as follows:
  - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
  - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

- d. If the contractor employs more than five employees, the contractor shall (i) provide annual training on the contractor's sexual harassment policy to all supervisors and employees providing services in the Commonwealth, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (ii) post the contractor's sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth that the contractor owns or leases for business purposes and (b) the contractor's employee handbook.
  - e. The requirements of these provisions 1. and 2. are a material part of the contract. If the Contractor violates one of these provisions, the Commonwealth may terminate the affected part of this contract for breach, or at its option, the whole contract. Violation of one of these provisions may also result in debarment from State contracting regardless of whether the specific contract is terminated.
  - f. In accordance with Executive Order 61 (2017), a prohibition on discrimination by the contractor, in its employment practices, subcontracting practices, and delivery of goods or services, on the basis of race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, disability, or veteran status, is hereby incorporated in this contract.
- 2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- C. **ETHICS IN PUBLIC CONTRACTING:** By submitting their proposals, offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their (bid/proposal), and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
- D. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By entering into a written contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
- E. **DEBARMENT STATUS:** By submitting their proposals, offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.
- F. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to

all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.

- G. **MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS:** Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.
- H. **CLARIFICATION OF TERMS:** If any prospective offeror has questions about the specifications or other solicitation documents, the prospective offeror should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.

I. **PAYMENT**

1. To Prime Contractor:

- a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- e. Unreasonable Charges. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the

Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (Code of Virginia, § 2.2-4363).

2. To Subcontractors:

- a. A contractor utilizing subcontractors for any part of its performance under this Contract is hereby obligated:
    - (1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
    - (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
  - b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.
3. Each prime contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.
  4. The Commonwealth of Virginia encourages contractors and subcontractors to accept electronic and credit card payments.
  5. The Contractor will include the provisions of (1). above in every subcontractor purchase order, so that the provisions will be binding upon each subcontractor or vendor.

- J. PRECEDENCE OF TERMS: The following General Terms and Conditions, APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS, CLARIFICATION OF TERMS, PAYMENT) shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.
- K. QUALIFICATIONS OF OFFERORS: The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the services/furnish the goods and the offeror shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The Commonwealth further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the Commonwealth that such offeror is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.
- L. TESTING AND INSPECTION: The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- M. ASSIGNMENT OF CONTRACT: A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.
- N. CHANGES TO THE CONTRACT: Changes can be made to the contract in any of the following ways:
1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
  2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
    - a. By mutual agreement between the parties in writing; or
    - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or

- c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia Vendors Manual. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.
- O. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.
- P. **MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS**

The Supplier and any subcontractors will maintain the following insurance coverages during the entire term of the Contract. All insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission. Supplier will provide Certificates of Insurance upon request to substantiate its compliance with these requirements.

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the Code of Virginia during the course of the contract shall be in noncompliance with the contract.
2. Employer's Liability - \$100,000.
3. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The

Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.

- Q. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract over \$50,000, as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA web site ([www.eva.virginia.gov](http://www.eva.virginia.gov)) for a minimum of 10 days.
- R. **DRUG-FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

- S. **NONDISCRIMINATION OF CONTRACTORS:** An offeror shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.
- T. **EVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION:** The eVA Internet electronic procurement solution, website portal [www.eVA.virginia.gov](http://www.eVA.virginia.gov), streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. All bidders or offerors must register in eVA; failure to register will result in the bid/proposal being rejected.



1. eVA Basic Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, electronic bidding, and the ability to research historical procurement data available in the eVA purchase transaction data warehouse.
2. eVA Premium Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments.
3. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of \$500 per order.
4. For orders issued August 16, 2006 and after, the Vendor Transaction Fee is:
  - a. DSBSD-certified Small Businesses: 1%, capped at \$500 per order.
  - b. Businesses that are not DSBSD-certified Small Businesses: 1%, capped at \$1,500 per order.

- U. EVA BUSINESS-TO-GOVERNMENT CONTRACTS AND ORDERS: The solicitation/contract will result in multiple purchase order(s) with the eVA transaction fee specified in the Current eVA Invoice Fees document found by clicking the Billing tab on the main eVA portal page at: eVA or <http://www.eva.virginia.gov/pages/evabilling.htm>. This fee structure is subject to change and vendors are responsible for remaining current by accessing the Current eVA Invoice Fees section of the eVA website on a regular basis.

Vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution and agree to comply with the following:

If this solicitation is for a term contract, failure to provide an electronic catalog (price list) or index page catalog for items awarded will be just cause for the Commonwealth to reject your bid/offer or terminate this contract for default. The format of this electronic catalog shall conform to the eVA Catalog Interchange Format (CIF) Specification that can be accessed and downloaded from eVA. Contractors should email Catalog or Index Page information to [eVA-catalog-manager@dgs.virginia.gov](mailto:eVA-catalog-manager@dgs.virginia.gov)

- V. AVAILABILITY OF FUNDS: It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

## 11.0 SPECIAL TERMS AND CONDITIONS

### A. AUDITS:

The contractor shall assist the Department and the Department's auditors, who may be employees of the Department, employees of other contractors, or agents

of the Department, in the conduct of audits. This assistance shall include the provision of secure, quiet office space, including furnishings and telephones needed by the auditors.

The contractor agrees to retain all books, records, and other documents relative to the contract which results from this RFP for five (5) years after final payment, or until the conclusion of any audit by the Commonwealth, whichever is sooner. The Department, its authorized agents, and state auditors, shall have full access to, and the right to examine, any of the contractor's materials relevant to the contract which results from this RFP.

**B. CERTIFIED CORPORATE ANNUAL REPORTS:**

Within 120 days of the close of its fiscal year, the contractor shall furnish to the Department an annual report of its consolidated operations. An independent auditor shall certify this report.

**C. CONFIDENTIALITY OF INFORMATION:**

The contractor shall treat all information utilized in its performance of the contract as confidential, personal information. The contractor shall handle all confidential information in accordance with the Virginia Privacy Protection Act, Virginia Code Section 2.1-377 et seq. All files, computer databases and other records developed or maintained pursuant to the execution of the contract are the property of the Department, and shall be delivered to the Department upon demand.

**D. CONTRACT REPRESENTATIVES:**

Both the Department and the Contractor shall appoint a contract representative who shall ensure that the provisions of this contract are adhered to. The Department will appoint a DHRM representative.

The contractor shall provide the full name and address of the contract representative including telephone and fax number. In the event of a change in contract representative(s), an official written notice shall be provided within 15 days of the change.

**E. CONTRACTOR AFFILIATION:**

If an affiliate (as defined below in this paragraph) of the contractor takes any action which, if taken by the contractor, would constitute a breach of the contract, the action taken by the affiliate shall be deemed a breach by the contractor. "Affiliate" shall mean a "parent," subsidiary or other company controlling, controlled by, or in common control with the contractor, subcontractor or agents of the contractor.

**F. DISPUTES:**

In accordance with Section 2.2-4363 of the Code of Virginia, disputes arising out of the contract, whether for money or other relief, may be submitted by the contractor for consideration by the Department. Disputes must be submitted in writing, with all necessary data and information, to the Director of the Department

of Human Resource Management at the James Monroe Building, 12th Floor, 101 North 14th Street, Richmond, Virginia 23219. Disputes will not be considered if submitted later than sixty (60) days after the final payment is made by the Department under the contract. Further, no claim may be submitted unless written notice of the contractor's intention to file the dispute has been submitted at the time of the occurrence or at the beginning of the work upon which the dispute is based. The Department shall render a final written decision regarding the dispute not more than ninety (90) days after the dispute is submitted, unless the parties agree to an extension of time. If the Department does not render its decision within 90 days, the contractor's sole remedy will be to institute legal action, pursuant to Section 2.2-4364 of the Code of Virginia. The Contractor shall not be granted relief as a result of any delay in the Department's decision.

During the time that the parties are attempting to resolve any dispute, each party shall proceed diligently to perform its duties.

**G. DRUG FREE WORK PLACE:**

The contractor acknowledges and certifies that it understands that the following acts by the contractor, its employees, and/or agents performing services on state property are prohibited:

1. The unlawful manufacture, distribution, dispensing, possession or use of alcohol or drugs and;
2. Any impairment or incapacitation from the use of alcohol or drugs (except the use of legal drugs for legitimate medical purposes).

The contractor further acknowledges and certifies that it understands that a violation of these prohibitions constitutes a breach of contract any may result in default action being taken by the Commonwealth in addition to any criminal penalties that may result from such conduct (Paragraph 5.16).

**H. LIABILITY:**

There shall be no liability on the part of and no cause of action shall arise against any officer or employee of the contractor for any actions taken or not taken or statements made by such officer or employee in good faith in the performance of his powers and duties.

**I. FORCE MAJEURE:**

Neither party shall be deemed to be in default of any of its obligations hereunder, if, and so long as, it is prevented from performing such obligations by an act of war, hostile foreign action, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

**J. SUBCONTRACTING:**

The contractor is fully responsible for all work performed under the contract. The contractor may not assign, transfer, or subcontract any interest in the contract, without prior written approval of the Department. The contractor shall require all

subcontractors to comply with all provisions of this RFP. The contractor will be held liable for contract compliance for all duties and functions whether performed by the contractor or any subcontractor.

K. TERMS AND RENEWAL OF CONTRACT:

The term of this contract is October 1, 2021 to September 30, 2023 with three 1-year renewal options. The contract may renew subject to the following.

1. This contract may be renewed by the Commonwealth for three (3) successive one-year periods under the terms and conditions of the original contract except as stated below. Price increases may be negotiated only at the time of renewal. Written notice of the Commonwealth's intention to renew shall be given approximately 90 days prior to the expiration date of each contract period.
  - a. If the Commonwealth elects to exercise the option to renew the contract for an additional one-year period, the contract price for the additional one year shall not exceed the contract price of the original increased/decreased by more than the percentage increase/decrease of the services category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.
  - b. If during any subsequent renewal period, the Commonwealth elects to exercise the option to renew the contract, the contract price for the subsequent renewal period shall not exceed the contract price of the previous renewal period increased/decreased by more than the percentage increased/decreased of the services category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.

L. TERMINATION, SUSPENSION AND CANCELLATION OF CONTRACT:

Either party may terminate this contract for its sole convenience with 120 days written notice to the other party.

Furthermore, in the event of emergency requirements which could not have reasonably been foreseen, the Department reserves the right to cancel and terminate this contract, in part or in whole without penalty, upon 60 days written notice to the contractor.

M. TRANSFER OF FILES:

If for any reason the Department decides to no longer contract with the contractor, the contractor agrees to transfer to the party designated by the Department, at no cost, all data, records, computer files, other files, and materials of any sort that were maintained for the Commonwealth. The contractor agrees to assist the Department in understanding, using, and transferring all files and records, including those maintained in computer language.

N. IDENTITY THEFT:

The Contractor assures that any and all personal information and data obtained as a result of performing contractual duties associated with this contract shall be held in strict confidence. Such information shall not be divulged without written permission from the individual and this Agency.

1. All personal information whether electronic or hard copy shall be stored in a manner that will prevent intrusion by unauthorized persons.
2. All intrusions or suspicion of intrusion into secured files containing personal information shall be reported to the Agency within 24 hours of detection.

O. E-VERIFY PROGRAM: EFFECTIVE 12/1/13. Pursuant to Code of Virginia, §2.2-4308.2., any employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with any agency of the Commonwealth to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such public contract. Any such employer who fails to comply with these provisions shall be debarred from contracting with any agency of the Commonwealth for a period up to one year. Such debarment shall cease upon the employer's registration and participation in the E-Verify program. If requested, the employer shall present a copy of their Maintain Company page from E-Verify to prove that they are enrolled in E-Verify.

P. NON-VISUAL ACCESS TO TECHNOLOGY: All information technology which, pursuant to this agreement, is purchased or upgraded by or for the use of any State agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply with the following nonvisual access standards from the date of purchase or upgrade until the expiration of this agreement:

1. Effective, interactive control and use of the Technology shall be readily achievable by nonvisual means;
2. the Technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the technology interacts;
3. Nonvisual Access Technology shall be integrated into any networks used to share communications among employees, program participants or the public; and
4. The Technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.
5. Compliance with the foregoing nonvisual access standards shall not be required if the head of the using agency, institution or political subdivision determines that (i) the Technology is not available with nonvisual access

because the essential elements of the Technology are visual and (ii) nonvisual equivalence is not available.

6. Installation of hardware, software or peripheral devices used for nonvisual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of nonvisual access software and peripheral devices.
7. If requested, the Contractor must provide a detailed explanation of how compliance with the foregoing nonvisual access standards is achieved and a validation of concept demonstration.
8. The requirements of this Paragraph shall be construed to achieve full compliance with the Information Technology Access Act, §§ 2.2-3500 through 2.2-3504 of the Code of Virginia.

**Q. HIPAA PRIVACY BUSINESS ASSOCIATES AGREEMENT**

The Contractor agrees to be bound by the HIPAA Privacy Business Associates Agreement. This agreement must be executed prior to any contract award. See Attachment 1.

## Appendix 1

### Small Business Subcontracting Plan

It is the goal of the Commonwealth that over 42% of its purchases be made from small businesses. All potential bidders are required to include this document with their bid response in order to be considered responsive.

**Small Business:** "Small business (including micro)" means a business which holds a certification as such by the Virginia Department of Small Business and Supplier Diversity (DSBSD) on the due date for bids. This shall also include DSBSD-certified women-owned and minority-owned businesses and businesses with DSBSD service disabled veteran owned status when they also hold a DSBSD certification as a small business on the bid due date. Currently, DSBSD offers small business certification and micro business designation to firms that qualify.

Certification applications are available through DSBSD online at [www.SBSD.virginia.gov](http://www.SBSD.virginia.gov) (Customer Service).

**Bidder Name:** \_\_\_\_\_

**Preparer Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Who will be doing the work:** ☐ I plan to use subcontractors ☐ I plan to complete all work

#### Instructions

- A. If you are certified by the DSBSD as a micro/small business, complete only Section A of this form.
- B. If you are not a DSBSD-certified small business, complete Section B of this form. For the bid to be considered and the bidder to be declared responsive, the bidder shall identify the portions of the contract that will be subcontracted to DSBSD-certified small business for the initial contract period in relation to the bidder's total price for the initial contract period in Section B.

#### Section A

If your firm is certified by the DSBSD provide your certification number and the date of certification.

Certification number: \_\_\_\_\_ Certification Date: \_\_\_\_\_

#### Section B

If the "I plan to use subcontractors box is checked," populate the requested information below, per subcontractor to show your firm's plans for utilization of DSBSD-certified small businesses in the performance of this contract for the initial

contract period in relation to the bidder's total price for the initial contract period. Certified small businesses include but are not limited to DSBSD-certified women-owned and minority-owned businesses and businesses with DSBSD service disabled veteran-owned status that have also received the DSBSD small business certification. Include plans to utilize small businesses as part of joint ventures, partnerships, subcontractors, suppliers, etc. It is important to note that these proposed participation will be incorporated into the subsequent contract and will be a requirement of the contract. Failure to obtain the proposed participation dollar value or percentages may result in breach of the contract.

### **Plans for Utilization of DSBSD-Certified Small Businesses for this Procurement**

#### **Subcontract #1**

Company Name: \_\_\_\_\_ SBSD Cert #: \_\_\_\_\_  
Contact Name: \_\_\_\_\_ SBSD Certification: \_\_\_\_\_  
Contact Phone: \_\_\_\_\_ Contact Email: \_\_\_\_\_  
Value % or \$ (Initial Term): \_\_\_\_\_ Contact Address: \_\_\_\_\_  
Description of Work: \_\_\_\_\_

#### **Subcontract #2**

Company Name: \_\_\_\_\_ SBSD Cert #: \_\_\_\_\_  
Contact Name: \_\_\_\_\_ SBSD Certification: \_\_\_\_\_  
Contact Phone: \_\_\_\_\_ Contact Email: \_\_\_\_\_  
Value % or \$ (Initial Term): \_\_\_\_\_ Contact Address: \_\_\_\_\_  
Description of Work: \_\_\_\_\_

#### **Subcontract #3**

Company Name: \_\_\_\_\_ SBSD Cert #: \_\_\_\_\_  
Contact Name: \_\_\_\_\_ SBSD Certification: \_\_\_\_\_  
Contact Phone: \_\_\_\_\_ Contact Email: \_\_\_\_\_  
Value % or \$ (Initial Term): \_\_\_\_\_ Contact Address: \_\_\_\_\_  
Description of Work: \_\_\_\_\_



**Subcontract #4**

Company Name: \_\_\_\_\_ SBSD Cert #: \_\_\_\_\_

Contact Name: \_\_\_\_\_ SBSD Certification: \_\_\_\_\_

Contact Phone: \_\_\_\_\_ Contact Email: \_\_\_\_\_

Value % or \$ (Initial Term): \_\_\_\_\_ Contact Address: \_\_\_\_\_

Description of Work: \_\_\_\_\_

**Subcontract #5**

Company Name: \_\_\_\_\_ SBSD Cert #: \_\_\_\_\_

Contact Name: \_\_\_\_\_ SBSD Certification: \_\_\_\_\_

Contact Phone: \_\_\_\_\_ Contact Email: \_\_\_\_\_

Value % or \$ (Initial Term): \_\_\_\_\_ Contact Address: \_\_\_\_\_

Description of Work: \_\_\_\_\_

## Appendix 2

**COMMONWEALTH OF VIRGINIA**  
**Department of Human Resource Management**  
**STANDARD CONTRACT**

Contract Number: OWE22-01

This contract entered into this \_\_\_\_ day of \_\_\_\_\_ 2021, by \_\_\_\_\_ hereinafter called the "Contractor" and Commonwealth of Virginia, Department of Human Resource Management, hereafter called the "Purchasing Agency."

WITNESSETH that the Contractor and the Purchasing Agency, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

SCOPE OF CONTRACT: The Contractor shall provide the goods/services to the Purchasing Agency as set forth in the Contract Documents.

PERIOD OF PERFORMANCE: From \_\_\_\_\_ through \_\_\_\_\_.

The contract documents shall consist of:

- (1) This signed form;
- (2) The following portions of the Request for Proposal dated \_\_\_\_\_:
  - (a) The Statement of Needs,
  - (b) The General Terms and Conditions,
  - (c) The Special Terms and Conditions together with any negotiated modifications of those Special Conditions;  
Attachment \_\_\_\_\_, Date \_\_\_\_\_  
Attachment \_\_\_\_\_, Date \_\_\_\_\_
- (3) The Contractor's Proposal dated \_\_\_\_\_ and the following negotiated modifications to the Proposal, all of which documents are incorporated herein.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

CONTRACTOR:

PURCHASING AGENCY:

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**Note: This public body does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.**

## Appendix 3

### SECURITY AND ACCESS CONTROL REQUIREMENTS

**The System must provide database and application security controls to prevent unauthorized use of the database, restrict access to the database, maintain database process controls, and log all database transactions. Application security must limit the access to application software screens, data elements, and all contents of data elements where appropriate. Web access controls must identify and manage all users accessing the System from web browsers.**

#### **Enumerated Requirements:**

- a. The system must restrict access by user ID and strong password access.
- b. The system must be based on a common platform and require a single login.
- c. The system must prevent unauthorized accesses.
- d. The system must protect data and any other information from malicious or inadvertent damage.
- e. The system must enforce access involving administrative privilege authority on a named-individual basis. All other access should be granted based on group membership and roles defined under criteria established and administered by the business system administrator.
- f. The system must have the capability to restrict content/data access by user.
- g. The system must have the capability to restrict views and data access by administrators, different user groups, etc.
- h. The system must provide multi-tier security architecture for a Web application. A two-tier security architecture is acceptable, but a three-tier architecture is preferable.
- i. The system must not require the collection of PII (Personally Identifiable Information).
- j. The system should comply with the Commonwealth's Information Technology Security standards (COV ITRM Standard SEC501-09). This standard can be found at  
[https://www.vita.virginia.gov/uploadedFiles/VITA\\_Main\\_Public/Library/PSGs/Information\\_Security\\_Standard\\_SEC501.pdf](https://www.vita.virginia.gov/uploadedFiles/VITA_Main_Public/Library/PSGs/Information_Security_Standard_SEC501.pdf)
- k. The system must be able to be designed to meet the accessibility standards adopted by the State of Virginia (ITRM Standard GOV103-00):  
[https://www.vita.virginia.gov/uploadedfiles/VITA\\_Main\\_Public/Library/AccessibilityStandard\\_GOV103-00\\_Eff\\_11-04-05.pdf](https://www.vita.virginia.gov/uploadedfiles/VITA_Main_Public/Library/AccessibilityStandard_GOV103-00_Eff_11-04-05.pdf)

## Attachment 1

### **Group Health Plan's Business Associate Agreement**

This agreement ("Agreement") is effective as of [REDACTED] and is made among [REDACTED] ("Business Associate"), and the Commonwealth of Virginia Group Health Plan, and where applicable, The Local Choice Plan and the Line of Duty Act Health Plan, and wellness programs, as administered by the Office of Health Benefits Programs of the Department of Human Resource Management, with delegation of specific roles to the Office of Workforce Engagement (collectively, the "Plans").

#### **WITNESSETH AS FOLLOWS:**

**WHEREAS**, the Commonwealth of Virginia has established and maintains the Plans as programs that provide health care coverage for employees, former employees, and eligible dependents of employees pursuant to § 2.2-2818 and employees of local governments, local officers, teachers, and retirees, and the eligible dependents of such employees, officers, teachers, and retirees pursuant to § 2.2-1204, of the Code of Virginia. The Plans meet the definition of a "health plan" under the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 CFR Parts 160-64);

**WHEREAS**, the Plans have retained Business Associate to provide certain administrative services with respect to the Plans which are described and set forth in a separate Administrative Services Agreement among those parties procured under RFP numbered [REDACTED] ("ASO Agreement") which is in effect on the effective date of this Agreement, as amended or replaced from time to time;

**WHEREAS**, the parties to this Agreement desire to establish the terms under which Business Associate may use or disclose Protected Health Information (as defined herein) such that the Plans may comply with applicable requirements of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 CFR Parts 160-64) ("HIPAA Privacy Regulations");

**NOW, THEREFORE**, in consideration of these premises and the mutual promises and agreements hereinafter set forth, the Plans, and Business Associate hereby agree as follows:

#### **Definitions**

##### Catch-all definition:

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health

Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

Specific definitions:

- (a) Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean **NAME OF BA**.
- (b) Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the party(ies) to this agreement, shall refer to the Department of Human Resource Management, Office of Health Benefits, as administrator of the Plans.
- (c) Covered Person. “Covered Person” shall mean the covered employee and the covered employees’ legal spouse and/or dependent children as specified in the plan document.
- (d) HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

**I. Obligations and Activities of Business Associate**

Business Associate agrees to:

- (a) Not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required by Law.
- (b) Use appropriate safeguards, and comply with the security standards of 45 CFR Parts 160, 162 and 164 with respect to electronic Protected Health Information, to prevent Use or Disclosure of Protected Health Information other than as provided for by the Agreement. Such safeguards shall include, but shall not be limited to the following:
  - 1. Maintain a comprehensive written privacy policy and security program that includes administrative, technical, and physical safeguards appropriate to the size and complexity of Business Associate’s operations and the nature and scope of Business Associate’s activities;
  - 2. Develop and apply standards to limit access to Protected Health Information to those members of Business Associate’s workforce who require such access to perform the functions of their jobs; and
  - 3. Train members of Business Associate’s workforce who have access to Protected Health Information.
- (c) Report to Covered Entity any Use or Disclosure of Protected Health Information not provided for by the Agreement of which it becomes aware, including Breaches of Unsecured Protected Health Information as required under 45 CFR 164.410, and any Security Incident of which it becomes aware, in accordance with to the following:

1. Business Associate will promptly report to the Plans within five (5) business days of any Use or Disclosure of Covered Person's Protected Health Information (whether by itself or by its Subcontractors) not permitted by this Agreement.
  2. The information reported shall include: a. the nature of the unauthorized Use or Disclosure; b. the nature of the Protected Health Information that is the subject of the unauthorized Use or Disclosure; c. who made and/or received the unauthorized Use or Disclosure; d. what Business Associate has done or will do to mitigate any deleterious effect of the unauthorized Use or Disclosure; e. what corrective action Business Associate has taken or will take to prevent a future similar unauthorized Use or Disclosure; and f. such other information, including a written report, as reasonably requested by the contact person.
- (d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any Subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply through this Agreement and to the Business Associate with respect to such information and implement and maintain sanctions against Subcontractors that violate such restrictions and conditions, and mitigate the effects of any such violation.
- (e) Make available Protected Health Information in a Designated Record Set to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524, in accordance with the following:
1. Non-HIPAA requests  
Business Associate will continue to respond to Covered Person's routine requests for access to their Protected Health Information as part of Business Associate's normal customer service functions, if those requests do not qualify as a formal HIPAA request. In order to be deemed a "formal HIPAA request" the Covered Person must submit the request directly to the appropriate Plan, and follow all of the reasonable procedural requirements set forth in the appropriate Plan's Privacy Notice. All requests submitted directly to Business Associate will be handled as a non-HIPAA request.
  2. HIPAA requests  
Business Associate will assist the Plans in responding to Covered Person's formal HIPAA requests by performing the following functions:  
Upon receipt of written notice (includes faxed and emailed notice) from either of the Plans, Business Associate will make available for inspection and obtaining copies by the Plans, or at the Plans' direction by the Covered Person (or the Covered Person's personal representative), any Protected Health Information about the Covered Person created or received for or from the Plans, in Business Associate's custody or control, so that the Plans may meet their access obligations under 45 CFR § 164.524 within 10 calendar days.  
  
Business Associate will not respond directly to Covered Person's formal HIPAA requests. Business Associate will refer the Covered Person to the proper Plan that is

either The Local Choice or the Commonwealth of Virginia Group Health Plan, so that the respective Plan can coordinate and prepare a timely response to the Covered Person.

- (f) Make any amendment(s) to Protected Health Information in a Designated Record Set as directed or agreed to by Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526, in accordance with the following:

1. Non-HIPAA requests

Business Associate will continue to respond to Covered Person's routine requests to amend their Protected Health Information as part of Business Associate's normal customer service functions, if those requests do not qualify as a formal HIPAA request. In order to be deemed a "formal HIPAA request" the Covered Person must submit the request directly to the Plan for which they are enrolled, and follow all of the procedural requirements set forth in the Plan's Privacy Notice. All requests submitted directly to Business Associate will be handled as a non-HIPAA request.

2. HIPAA requests

Business Associate will assist the Plans in responding to Covered Person's formal HIPAA requests by performing the following functions:

Upon receipt of written notice (includes faxed and e-mailed notice) from the Plans, Business Associate will amend any portion of the Protected Health Information created or received for or from the Plans in Business Associate's custody or control, so that the Plans may meet their amendment obligations under 45 CFR § 164.526 within 10 calendar days.

Business Associate will not respond directly to Covered Person's formal HIPAA requests. Business Associate will refer the Covered Person to the Plans so that the Plans can coordinate and prepare a timely response to the Covered Person.

- (g) Maintain and make available the information required to provide an accounting of Disclosures to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528 in accordance with the following:

1. Non-HIPAA requests

Business Associate will continue to respond to Covered Person's routine requests for an accounting of Disclosures of their Protected Health Information as part of Business Associate's normal customer service functions, if those requests do not qualify as a formal HIPAA request. In order to be deemed a "formal HIPAA request" the Covered Person must submit the request directly to the Plan for which they are enrolled, and follow all of the reasonable procedural requirements set forth in the Plan's Privacy Notice. All requests submitted directly to Business Associate will be handled as a non-HIPAA request.

## 2. HIPAA requests

Business Associate will assist the Plans in responding to Covered Person's formal HIPAA requests by performing the following functions:

So the Plans may meet their Disclosure accounting obligations under 45 CFR § 164.528, Business Associate will do the following:

### a. Disclosure Tracking

Business Associate will record each Disclosure that Business Associate makes of Covered Person's Protected Health Information, which is not excepted from Disclosure accounting under Section I.g.2.b. of this agreement.

The information about each Disclosure that Business Associate must record ("Disclosure Information") is (a) the Disclosure date, (b) the name and (if known) address of the person or entity to whom Business Associate made the Disclosure, (c) a brief description of the Protected Health Information disclosed, and (d) a brief statement of the purpose of the Disclosure or a copy of any written request for Disclosure under 45 CFR §164.502(a)(2)(ii) or §164.512.

For repetitive Disclosures of Covered Person's Protected Health Information that Business Associate makes for a single purpose to the same person or entity, Business Associate may record (a) the Disclosure Information for the first of these repetitive Disclosures, (b) the frequency, periodicity or number of these repetitive Disclosures, and (c) the date of the last of these repetitive Disclosures.

### b. Exceptions from Disclosure Tracking

Business Associate will not be required to record Disclosure Information or otherwise account for Disclosures of Covered Person's Protected Health Information (a) for Treatment, Payment or Health Care Operations, (b) to the Covered Person who is the subject of the Protected Health Information, to that Covered Person's personal representative, or to another person or entity authorized by the Covered Person (c) to persons involved in that Covered Person's health care or payment for health care as provided by 45 CFR § 164.510, (d) for notification for disaster relief purposes as provided by 45 CFR § 164.510, (e) for national security or intelligence purposes, (f) to law enforcement officials or correctional institutions regarding inmates, (g) that are incidental to a Use or Disclosure that is permitted by this Agreement or the ASO Agreement, (h) as part of a limited data set in accordance with 45 CFR § 164.514(e), or (i) that occurred prior to the Plan's compliance date.

### c. Disclosure Tracking Time Periods

Business Associate will have available for the Plans the Disclosure Information required by Section I.g.2.a above for the six (6) years immediately preceding the date of the Plans' request for the Disclosure Information.



d. Provision of Disclosure Accounting

Upon receipt of written notice (includes faxed and e-mailed notice) from the Plans, Business Associate will make available to the Plans, or at the Plans' direction to the Covered Person (or the Covered Person's personal representative), the Disclosure Information regarding the Covered Person, so the Plans may meet their Disclosure accounting obligations under 45 CFR § 164.528 within 10 calendar days.

Business Associate will not respond directly to Covered Person's formal HIPAA requests for an accounting of Disclosures. Business Associate will refer the Covered Person to the Plans so that the Plans can coordinate and prepare a timely accounting to the Covered Person.

- (h) To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s).
- (i) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

## **II. Permitted Uses and Disclosures by Business Associate**

- (a) Business Associate may only use or disclose Protected Health Information "as necessary to perform the services set forth in **ASO Agreement**."
  - 1. Protected Health Information Use  
Business Associate may use Covered Person's Protected Health Information as necessary for Business Associate to perform Data Aggregation services, and to create De-identified Information, Summary Health Information and/or Limited Data Sets.
  - 2. Protected Health Information Disclosure  
Business Associate may disclose, in conformance with the HIPAA Privacy Regulations, Covered Person's Protected Health Information to make Disclosures of De-identified Information, Limited Data Set Information, and Summary Health Information, and to make Incidental Disclosures.
- (b) Business associate may use or disclose Protected Health Information as Required by Law.
- (c) Business Associate agrees to make uses and Disclosures and requests for Protected Health Information consistent with Covered Entity's Minimum Necessary policies and procedures that accomplish the intended purpose.
- (d) Business Associate may not use or disclose Protected Health Information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity except for the specific Uses and Disclosures set forth below.

- (e) Business Associate may use Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
- (f) Business Associate may disclose Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided the Disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been Breached.
- (g) Business Associate may provide Data Aggregation services relating to the Health Care Operations of Covered Entity.

### **III. Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions**

- (a) Covered Entity shall notify business associate of any limitation(s) in the Notice of Privacy Practices of Covered Entity under 45 CFR 164.520, to the extent that such limitation may affect Business Associate's Use or Disclosure of Protected Health Information.
- (b) Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an Individual to use or disclose his or her Protected Health Information, to the extent that such changes may affect Business Associate's Use or Disclosure of Protected Health Information.
- (c) Covered Entity shall notify Business Associate of any restriction on the Use or Disclosure of Protected Health Information that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's Use or Disclosure of Protected Health Information.

### **IV. Permissible Requests by Covered Entity**

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity except if Business Associate will use or disclose Protected Health Information for, and the agreement includes provisions for, Data Aggregation or management and administration and legal responsibilities of Business Associate.

### **V. Term and Termination**

- (a) Term. The Term of this Agreement shall be effective as of **DATE** and shall terminate upon termination of the ASO Agreement or on the date Covered Entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.

(b) Termination for Cause. Business Associate authorizes termination of this Agreement by Covered Entity, if Covered Entity determines that Business Associate or its Subcontractor has violated a material term of the Agreement and Business Associate has not cured the breach of this Agreement or ended the violation within 10 business days or such longer time specifically agreed to by Covered Entity.

(c) Obligations of Business Associate Upon Termination.

Upon termination of this Agreement for any reason, Business Associate, with respect to Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall in accordance with its record retention policy that it applies to similar records, except to the extent a longer period of time is specified by the ASO Agreement or the law:

1. Retain only that Protected Health Information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
2. Return to Covered Entity or destroy the remaining Protected Health Information that Business Associate still maintains in any form;
3. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information to prevent Use or Disclosure of the Protected Health Information, other than as provided for in this Section, for as long as Business Associate retains the Protected Health Information;
4. Not use or disclose the Protected Health Information retained by Business Associate other than for the purposes for which such Protected Health Information was retained and subject to the same conditions set out at Section II.f which applied prior to termination; and
5. Return to Covered Entity or destroy the Protected Health Information retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.
6. Transmit the Protected Health Information to another Business Associate of Covered Entity at termination and obtain or ensure the destruction of Protected Health Information created, received, or maintained by Subcontractors.

(d) Survival. The obligations of business associate under this Section shall survive the termination of this Agreement.

## **VI. Miscellaneous**

(a) Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

- (b) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.
- (c) Substitution of Terms. If any Use or Disclosure of PHI by Business Associate or Covered Entity under the ASO Agreement would be invalidated by the terms and provisions of this Agreement, the terms of the ASO Agreement will be interpreted by substituting Covered Entity for Covered Entity (where appropriate) in order for such Use or Disclosure to be valid under this Agreement.
- (d) Changes. The Parties agree that any change to the services under the ASO Agreement that permits a Use or Disclosure of PHI on behalf of Covered Entity shall be pursuant to Covered Entity's Treatment, Payment or Health Care Operations, unless this Agreement is amended in writing.
- (e) Duty to Mitigate. Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- (f) Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.
- (g) Business Associate is an independent contractor and not an agent of either of the Plans for any purpose under this agreement.
- (h) Notice. Any notice or reporting required under this Agreement to be given to Business Associate shall be made in writing.

\* \* \*

IN WITNESS WHEREOF, Plans and Business Associate have caused this Business Associate Agreement to be executed by duly authorized officers.

Commonwealth of Virginia Group  
Health Plan, The Local Choice Plan,  
and the Line of Duty Act Plan

Business Associate

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Date: \_\_\_\_\_